

**Central Administrative Tribunal
Principal Bench, New Delhi**

O.A.No.3471/2013

Monday, this the 20th day of March 2017

**Hon'ble Mr. Justice Permod Kohli, Chairman
Hon'ble Mr. K.N. Shrivastava, Member (A)**

Ms. Roopali Ravindra Mathur
Age 38 years
d/o Mr. Ravindra Kishore Mathur
r/o Flat No.5, 2nd floor
Ravi Apartment, Plot No.420/1
Dunetha Road, Nani Daman, Daman – 396220

(Mr. S K Gupta and Mr. Vikram Singh, Advocates)

..Applicant

Versus

1. Union Territory of Daman & Diu
Through its Administrator
Daman Secretariat, Daman – 396220
2. Director
Directorate of Medical & Health Science
Community Health Centre
Union Territory of Daman & Diu
Moti Daman, Daman – 396220
3. Secretary
Union Public Service Commission
Dholpur House, Shahjahan Road
New Delhi

..Respondents

(Mrs. Anupama Bansal, Advocate for respondent Nos. 1 & 2 –
Mr. J B Mudgil, Advocate for respondent No.3)

O R D E R (ORAL)

Justice Permod Kohli:

The applicant acquired Bachelor of Dental Surgery (BDS) Degree from Goa University in the year 1999/2000 and enrolled herself with the Goa State Dental Council, Panaji, Goa on 10.08.2000. A copy of registration certificate is placed on record as Annexure A-4. Though

initially the registration was up to 31.12.2000, however, it was later on renewed and vide endorsement made on the certificate, the registration was renewed permanently from the year 2004 onwards on deposit of the *lump sum* registration fee.

2. The applicant was engaged on contract basis as Public Health Dentist on 28.09.2000. She continued up to 08.05.2011 and again reengaged on 22.08.2011 where she continued up to 12.09.2012. She was also given reengagement on 13.09.2012 and continues to work till the date of issuance of experience certificate dated 12.08.2013 (Annexure A-5).

3. Respondent No.3 – Union Public Service Commission (UPSC) issued the Advertisement No.06/2013 (Annexure A-7) in the Employment News dated 11-17.05.2013 inviting applications for the post of Public Health Dentist at Sl. No.21 of the Advertisement Notice. In terms of the Notice, the prescribed age limit was not exceeding 35 years. Educational qualifications as stipulated in the Notice were (i) a degree qualification included in part I or part II of the Schedule to the Dentist's Act, 1948 & (ii) should be registered with the Dental Council, and the experience of two years of Dental work in a hospital or in private practice.

4. The applicant, considering herself to be eligible and working as Public Health Dentist in the Union Territory of Daman & Diu, applied for the post. The UPSC issued call letter dated 30.08.2013 calling upon the applicant to attend the interview for the post of Public Health Dentist scheduled for 19.09.2013 at 12.00 noon. The applicant appeared in the office of respondent No.3 on the date and time fixed for the interview when she was handed over the impugned letter dated 19.09.2013 (Annexure A-1). The said letter reads as under:-

“In continuation of this office letter of even number dated 30-08-2013 on the subject mentioned above calling you for attending the interview scheduled to be held on 19th September, 2013. In the meantime Commission has received a reference from UT of Daman & Diu rejecting your case for grant of age relaxation. Commission also does not have policy to grant age relaxation. In view of this, your candidature for the subject recruitment case has been cancelled. No further correspondence will be entertained in the matter.”

5. It is relevant to note that when the applicant applied for the post, she had become overage and applied for relaxation of age while making application for selection in response to the aforementioned Advertisement. Vide the impugned order, the applicant was communicated that the Commission has received a reference from the Union Territory of Daman & Diu rejecting her application for grant of age relaxation. It is further stated that the Commission does not have policy to grant age relaxation. Accordingly, the candidature of the applicant for the post in question was cancelled. It is this order, which is subject matter of challenge in the present O.A. before us.

6. Mr. S K Gupta, learned counsel appearing for the applicant has referred to the Advertisement Notice. Note (d) under caption ‘Age limit as on closing date’ deals with the age limit as on closing date. Relevant extract is noticed hereinbelow:-

“d) Age limit as on closing date:

(v) Not exceeding 35 years for the posts at Item Nos.9 and 21.”

7. Under paragraph 5 (c) of the Advertisement Notice, there is a provision for age relaxation for Central Government employees. The said paragraph reads as under:-

“(c) Age relaxation for Central Government employees:

The upper age limit is relaxable for Central/U.T. Govt. Servants up to 5 years as per instructions issued by the Govt. of India from time to

time. (10 years for persons belonging to Scheduled Castes/Scheduled Tribes and 8 years for persons belonging to other Backward Classes in respect of the posts reserved for them) in accordance with the instructions or orders issued by the Government of India. A candidate claiming to belong to the category of Central Government servant and thus seeking age relaxation under this para would be required to produce a Certificate in the prescribed proforma issued after the date of advertisement from his/her Employer on the Office letter head to the effect that he/she is a regularly appointed Central Government Servant and not on casual/adhoc/daily wages/hourly paid/ contract basis employee.

The age relaxation will be admissible to such of the Government servants as are working in posts which are in the same line or allied cadres and where a relationship could be established that the service already rendered in a particular post will be useful for the efficient discharge of the duties of the post(s) recruitment to which has been advertisement. Decision in this regard will rest with the Commission.”

8. The above condition/stipulation in the Notice permits age relaxation in respect to the Central Government employees, including the employees working in the Union Territory Government. However, the said age relaxation is not permissible for the casual/*ad hoc*/daily wages/ hourly paid/ contract basis employees. It appears that in view of the above mentioned stipulation that the age relaxation was not allowed to the applicant.

9. UPSC has placed on record a copy of communication dated 31.12.2002 from Ministry of Personnel, Public Grievances & Pensions (Department of Personnel & Training) to the UPSC, which reads as under:-

“I am directed to refer to your letter No.2/42/100-RR dated 29.11.002 and to clarify that ‘age relaxation to Government servants’ applies only to Central Government employees appointed on regular basis according to the relevant Recruitment Rules. Therefore, this benefit will not be admissible to those appointed on short-term on contract or otherwise.”

10. In view of the above mentioned communication, the age relaxation is permissible only to Central Government employees appointed on regular basis according to the relevant Recruitment Rules and the benefit is not admissible to those appointed on short-term contract or otherwise.

Learned counsel appearing for the UPSC accordingly submits that the impugned order cancelling the candidature of the applicant is based upon the aforesaid DoPT communication.

11. The stand of the respondent Nos. 1 & 2 in their counter affidavit has been the same. While referring to the Recruitment Rules and the age prescribed therein, it is stated that the age limit prescribed under the Recruitment Rules is not exceeding 35 years and the applicant being of the age of 38 years on the last date of making applications in respect to the aforementioned Advertisement, was ineligible. As regards the age relaxation, it is stated that the contractual employees are not entitled to age relaxation in view of the communication of DoPT referred to above, as also the stipulation contained in the Advertisement Notice.

12. The respondent Nos. 1 & 2 have also relied upon the judgment of the Hon'ble Supreme Court in the case of **Union Public Service Commission v. Girish Jayanti Lal Vaghela & others** (Appeal (C) No.933 of 2006) decided on 02.02.2006. One of the issues before the Apex Court was the question of eligibility of a contractual employee. Whether a contractual employee can be construed to be a government employee for purposes of relaxation of the age? Considering the provisions of the Central Civil Services (Classification, Control & Appeal) Rules where the government servant has been defined, it was held that the contractual

employee is not holding a civil post. It was in that view of the matter the Hon'ble Apex Court, taking into consideration the claim of the contractual employee for seeking age relaxation, held as under:-

“20. For the reasons discussed above, we are clearly of the opinion that respondent no.1 cannot be said to be a Government servant as he was working on contract basis and, therefore, he was not eligible for any relaxation in upper age limit. The view taken by the High Court is clearly erroneous in law and is liable to be set aside.”

13. We may notice here that Girish Jayanti Lal Vaghela, who was the petitioner in the said case, had ceased to be even a contractual employee on expiry of the period of contract. This judgment was rendered on 02.02.2006 and has been reiterated in the case of **Union Public Service Commission v. Dr. Jamuna Kurup & others** (2008) 11 SCC 10.

14. During the course of the hearing, Mr. S K Gupta, learned counsel for applicant has brought to our notice and placed on record a copy of circular dated 07.02.2013 issued by the Administration of U.T. of Daman & Diu, Department of Personnel & Administrative Reforms, Secretariat, Daman. The Union Territory considered the question of relaxation of age in respect to the employees, who are working in the Union Territory of Daman & Diu. The said circular takes note of this issue in the following manner:-

“Time and again individual / departmental requests was made to the Hon'ble Administrator for relaxation of Recruitment Rules especially on maximum age bar on various grounds.

In the cases where age relaxation is requested in respect of daily rated and other contractual employees, who have been working as such for prolonged periods, it has also been noticed in many cases that although the employees were well within their age limit at the time of their initial engagement / appointment, however, over a period of time, they get over-aged when the regular vacancies become available, thus depriving them of their chance to apply for regular appointments/ compete with others.

After careful consideration of such cases, the Hon'ble Administrator, Daman & Diu has been pleased to order that for posts filled up by the UT Administration of Daman & Diu, the following policy guidelines are hereby laid down for granting relaxation of age to those who have crossed the maximum age prescribed as per existing R.Rs.:-

- 1) In cases where recruitment process is held up due to litigation / administrative reasons after inviting applications for filling up the vacancy, fixation of the crucial date for age limit i.e. the crucial date for determining the age would be same even if the examination is shifted / postponed to some later date after notifying the vacancy and fresh applications are invited, in such cases the candidate(s), who have applied against first advertisement will also be eligible for relaxation of age under this clause provided they were eligible at the time of their first application.
- 2) In cases where the candidate has been working on daily wages / ad-hoc / contract basis in the UT Administration of Daman & Diu for some years and was not over aged for regular appointment when he / she was initially appointed on ad-hoc / contract basis, in such cases relaxation of age is admissible to the extent of total period of service spent continuously without any break. If breaks are there, condonation to the extent of total past service (excluding breaks) in any capacity (ad-hoc/ contract) can be considered.”

15. In view of the aforesaid circular, we directed Mrs. Anupama Bansal, learned counsel appearing for respondent Nos.1 & 2 to seek instructions in that regard. Despite opportunity, she has not been able to report any instructions. In the absence of there being any instructions, it is presumed that the circular is *in vogue* and has application to the cases of the employees, who are governed by the circular for the purpose of age relaxation.

16. It is admitted case of the parties that the applicant was engaged by the Union Territory of Daman & Diu on contract basis as Public Health Dentist in the year 2000 and continued to work there up to 2015 with two short breaks, as indicated hereinabove. The post of Public Health Dentist at

Sl. No.21 of the Advertisement Notice is also in the Directorate of Medical & Health Services, Administration of Daman & Diu, though the post is regular in nature. The applicant has experience of Public Health Dentist, that too, in the Union Territory of Daman & Diu itself. She has contributed a lot in the Territory in public service by performing the duties in the said Territory. The circular dated 07.02.2013 came into being to provide the age relaxation in respect to the employees, who are working in hazardous condition in Union Territory of Daman & Diu. As a matter of fact, this circular has been issued in larger public interest and not merely in the interest of the government employees. The judgment relied upon by the respondents in the case of **Girish Jayanti Lal Vaghela's** (supra) was rendered at the relevant time in absence of there being any Government policy in this regard. So on that basis, the judgment of Hon'ble Apex Court is clearly distinguishable. In the present case, there is a clear Government policy for relaxation of the age. This Government policy has not been taken into consideration either by the Union Territory of Daman & Diu, or Government of India or by the UPSC, and the candidature of the applicant has been rejected / cancelled in ignorance of this policy.

17. In **Harminder Kaur & others v. Union of India & others** (2009) 13 SCC 90, the Apex Court was considering the question of regularization of the school teachers appointed by the Education Department of Chandigarh Administration on contract basis. Some of the appointees were sponsored by the Regional Employment Exchange. After the requisitions were sent by the Government, such persons were engaged on *ad hoc/* contract basis initially for a period of six months extendable with suitable breaks. While considering the cases of such *ad hoc/*

contractual employees for purposes of regularization, the Hon'ble Supreme Court found that the employees were eligible under the Recruitment Rules. There was Rule 6 of the Chandigarh Education Service (School Cadre) Group 'C' Recruitment Rules, 1991, whereunder the Administrative, Union Territory, Chandigarh could grant age relaxation. Rule 6 is reproduced below:-

“6. Power to relax. – Where the Administrator, Union Territory, Chandigarh is of the opinion that it is necessary or expedient so to do, he may, by order, for reasons to be recorded in writing, relax any of the provisions of these Rules in respect of any class or category of persons.”

18. Considering the aforesaid rule and the fact that *ad hoc* teachers were continued for considerable period, the Hon'ble Supreme Court issued the following directions:-

“25. We, therefore, are of the opinion that the High Court was correct in its view. We were, however, informed that 800 posts of teachers are lying vacant. Ms. Kamini Jaiswal informed that the Administration is ready and willing to fill up the said posts on a regular basis. While doing so, we have no doubt in our mind that the cases of the appellants shall also be taken into consideration and the Administrator may consider the desirability of relaxing the age limit provided for in the Rules.”

19. Though the present case is not of regularization but definitely involves the question of relaxation. In the present case, there is a clear Government policy of the Union Territory of Daman & Diu. The respondents have not taken into account the Government policy issued vide circular dated 07.02.2013, which permits the authorities to grant age relaxation even in respect to contractual employees. Candidature of the applicant has been cancelled without considering the applicable norms/law.

20. In the above circumstances, this O.A. is allowed with the following directions:-

- i) Impugned order dated 19.09.2013 (Annexure A-9) is quashed.
- ii) Respondent Nos. 1 & 2 are directed to consider the case of the applicant for age relaxation in terms of the circular dated 07.02.2013. The process of consideration be completed within one month from the date of receipt of a copy of this order.
- iii) In the event the authorities are satisfied about age relaxation keeping in view the long service rendered by the applicant in the Union Territory of Daman & Diu, the same shall be communicated to the UPSC.
- iv) In the event of age relaxation, the UPSC shall call the applicant for interview within a period of two months from the date of communication for age relaxation, and based upon the performance of the applicant, consequential recommendations shall be made by the UPSC to the competent authority within a period of one month from the date of interview, which shall pass the final order thereafter within a period of two months.

No order as to costs.

(K.N. Shrivastava)
Member (A)

(Justice Permod Kohli)
Chairman

March 20, 2017
/sunil/